Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

RANDELL L.D. SMITH,

Petitioner,

vs.

SANDRA SCOTT, PHILLIP DICK, J. MICHAEL STRUBHAR, ROBERT BUHRKE, JERRY L. HOFFMAN, PATRICK D. KILLIAN, SALLY RUDOLPH and THOMAS YOUNG,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT, FOURTH JUDICIAL DISTRICT,
STATE OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

RANDELL L.D. SMITH
Petitioner, Pro Se
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1699

QUESTIONS PRESENTED

1. Was the Petitioner Randell L.D. Smith denied the opportunity to fully and completely present his case and arguments to the Zoning Board in direct violation of the First and Fourteenth Amendments of the Constitution of the United States of America?

2. Were Smith's civil rights pursuant to 42 U.S.C. § 1983 violated by the Zoning Board and the state court system?

OPINIONS BELOW

The opinion of the Appellate Court Fourth Judicial District is dated May 1, 1998 and is unpublished. (Appendix A). The order of the Appellate Court Fourth Judicial District was filed on November 10, 1998. (Appendix B). The Circuit Court of McLean County did not issue an opinion and dismissed Petitioner's amended complaints with prejudice by docket entry dated June 25, 1997. A copy of the Notice of Appeal filed July 14, 1997 is attached as Appendix C evidencing the fact that no formal decision was entered.

STATEMENT OF JURISDICTION

A timely petition for leave to appeal was denied by the Illinois Supreme Court on October 6, 1998. (Appendix D). Petitioner filed a Petition for Writ of Certiorari on December 16, 1998 and was given sixty days to refile by letter dated December 21, 1998.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First and Fourteenth Amendments of the Constitution of the United States of America.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

The Petitioner Randell L.D. Smith filed suit in the state court system against various members of the Zoning Board

alleging that they violated his rights of Due Process of Law and freedom of speech when they prevented him from fully and completely presenting his case at the rezoning hearing. The trial court dismissed the Petitioner's initial complaint and amended complaints for failure to state a cause of action under 42 U.S.C. § 1983, and this was affirmed by the Illinois Appellate Court.

Smith then filed a timely Petition for Leave to Appeal to the Illinois Supreme Court, but this was denied on October 6, 1998. Smith now seeks leave for this Honorable Court to hear and review his case.

REASONS FOR GRANTING THE WRIT

Smith's Petition should be allowed since the state courts have ignored the federal law concerning 42 U.S.C. § 1983. Two, and only two, allegations are required in order to state a § 1983 cause of action: (1) the plaintiff must allege that some person has deprived him of a federal right; and (2) the plaintiff must allege that the person who has deprived him of that right acted under color of state or territorial law. *See Gomez v. Toledo*, 100 S. Ct. 1920, 1923 (1980). Smith did this in his initial complaint and amended complaints, but the state courts dismissed all of his complaints in violation of this rule.

A long line of federal decisions hold that state deprivations of property rights are cognizable under 42 U.S.C. § 1983. *See Lynch v. Household Finance Corp.*, 92 S. Ct. 1113.

It should also be specifically noted that under the applicable Zoning Ordinance § 40.42-2.1 that Smith's proposed donation of the land in question to the American Legion was in fact exempted from the permitted use restriction. The Zoning Board did not even follow its own rules and regulation by allowing

Smith to fully present his case. Smith was thus denied Due Process of Law by the arbitrary actions of the Zoning Board.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE APPELLATE COURT OF ILLINOIS FOR THE FOURTH DISTRICT DATED AND FILED MAY 1, 1998

NO. 4-97-0608

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

Appeal from Circuit Court of McLean County
No. 96L197

Honorable Ronald C. Dozier,
Judge Presiding.

RANDELL L.D. SMITH,

Plaintiff-Appellant,

v.

SANDRA SCOTT, PHILLIP DICK, J. MICHAEL STRUBHAR, ROBERT BUHRKE, JERRY L. HOFFMAN, PATRICK D. KILLIAN, SALLY RUDOLPH, and THOMAS YOUNG,

Defendants-Appellees.

ORDER

In May 1996, plaintiff Randell Smith, a World War II veteran, attempted to donate 3 1/8 acres of land to the American Legion Post 56 (Post) of Bloomington, Illinois. The Post

planned to build a headquarters on the property. In June 1996, defendant Sandra Scott, Director of the Department of Building and Zoning of McLean County, informed plaintiff that the Post could not erect its headquarters on that property unless it was rezoned from agricultural to commercial. Plaintiff submitted an application to amend the zoning map, and a hearing was held before the Zoning Board (Board). The Board concluded the application did not meet the standards set forth in the zoning ordinance, and the plaintiff's application was denied.

In October 1996, plaintiff filed a complaint *pro se* against Scott and other members of the Board, alleging they violated his civil rights under section 1983 of the Civil Rights Act of 1871 (42 U.S.C. §1983 (1994)). Plaintiff alleged the defendants violated his due process and freedom of speech rights when they prevented him from fully and completely presenting his case at the rezoning hearing. On December 18, 1996, plaintiff filed his first-amended complaint, naming Thomas Young as an additional defendant.

On December 31, 1996, the defendants moved to dismiss the complaint for failure to state a cause of action. 735 ILCS 5/2-615 (1996). The motion claimed that plaintiff had not pled specific facts and did not indicate how he had been harmed. Before the hearing on the motion, plaintiff filed a second-amended complaint on January 8, 1997. A hearing was held on January 31, 1997, and the court dismissed the plaintiff's second-amended complaint without prejudice, allowing the plaintiff 30 days to amend his complaint a third time.

In February 1997, plaintiff filed a third-amended complaint *pro se*, consisting of 42 pages, 159 pages of exhibits, and 14 causes of action. Again, defendants moved to dismiss the

complaint, asking the court to dismiss it with prejudice. The court dismissed the complaint, but without prejudice, allowing plaintiff 28 days to file a fourth-amended complaint. The court indicated to plaintiff that his *pro se* complaints were so far from complying with the Illinois Code of Civil Procedure (Code), that he should hire an attorney to draft the next one. The court stated this was plaintiff's last opportunity to amend.

Plaintiff never filed a fourth-amended complaint, but did file two documents in May 1996, titled "Notice of Judicial Misconduct" and "The Right to Disobey a Corrupt Order." Plaintiff alleged the judge was ignorant and unprepared, and that he should "rescue" himself from the case. The judge denied the plaintiff's motion for substitution of judge and granted the defendant's motion to dismiss with prejudice. Plaintiff appeals, arguing the trial court erred in dismissing his complaints. We affirm.

To state a cause of action under section 1983, plaintiff must allege facts to show that (1) some person has deprived him of a federal right, and (2) that person acted under color of state law. *Lopez v. Department of Health Services*, 939 F. 2d 881, 883 (1991). In determining whether to dismiss for failure to state a cause of action, the relevant inquiry is whether sufficient facts are contained in pleadings which, if established, could entitle plaintiff to relief. *OnTap Premium Quality Waters, Inc. v. Bank of Northern Illinois*, 262 Ill. App. 3d 254, 264, 634 N.E.2d 425, 433 (1994). The trial court should grant plaintiff leave to amend pleadings to state a cause of action, unless it is apparent that even after amendment no cause of action can be stated. *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 266 Ill. App. 3d 1037, 1045, 641 N.E.2d 584, 589 (1994). The granting of a motion to dismiss for failure to state a cause of action is within

the sound discretion of the trial court. *Oravek v. Community School District 146*, 264 Ill. App. 3d 895, 897, 637 N.E.2d 554, 556 (1994).

Plaintiff's third-amended complaint, his final complaint, was properly dismissed because it failed to state a cause of action under section 1983. The complaint was a bewildering, 200-page clutter of zoning ordinances, hearing procedures, board meeting transcripts, and dissertations on constitutional law. It alleged 14 causes of action, none of which formed the outline of any recognizable legal dispute, let alone a complex 1983 civil rights action. All pleadings must contain a plain and concise statement of the pleader's cause of action. *Brown Leasing, Inc. v. Stone*, 284 Ill. App. 3d 1035, 1045, 673 N.E.2d 430, 437 (1996). Although mere verbosity, repetition, or the inclusion of surplusage will not warrant the dismissal of a complaint (*Capitol Indemnity Corp. v. Stewart Smith Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124, 593 N.E.2d 872, 875 (1992)), the defendant is not required to guess what is being called upon to defend (*People ex rel. Skinner v. Graham*, 170 Ill. App. 3d 417, 438, 524 N.E.2d 642, 654 (1988)). The trial court did not abuse its discretion when it dismissed plaintiff's third-amended complaint.

Also, the complaint was properly dismissed with prejudice because it was obvious the plaintiff was never going to submit a proper complaint. After the plaintiff's fourth failed attempt to draft a proper complaint, the trial court generously afforded the him one last chance to file a proper complaint. The plaintiff never replead. Instead, he filed two documents accusing the judge of being corrupt. At this point, it was obvious that plaintiff was not able to submit a proper complaint, and was not willing to hire an attorney to do so. The trial court may bring an end to

litigation when further amendments to pleadings will not further the ends of justice. *Plocar v. Dunkin' Donuts of America, Inc.*, 103 Ill. App. 3d 740, 750, 431 N.E.2d 1175, 1182 (1981). In addition, plaintiff is not excused by his *pro se* status. See *In re A.H.*, 215 Ill. App. 3d 522, 529-30, 575 N.E.2d 261, 266 (1991). We refuse to apply a more lenient standard to a plaintiff who has been given numerous opportunities to plead, and has repeatedly ignored the trial court's suggestion to hire an attorney.

Plaintiff also appeals the trial court's dismissal of his original, first-, and second-amended complaints. However, once a party files an amended pleading, he waives any objection to the trial court's ruling on the former complaints. *Barnett v. Zion Park District*, 171 Ill. 2d 378, 384, 665 N.E.2d 808, 811 (1996). When an amended pleading is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record and is effectively abandoned and withdrawn. *Barnett*, 171 Ill. 2d at 384, 665 N.E.2d at 811.

Plaintiff insists that his earlier complaints may nevertheless be reviewed because he never manifested an intent to abandon the original counts. See *Moore v. Everett Snodgrass, Inc.*, 87 Ill. App. 3d 388, 390, 408 N.E.2d 1166, 1169 (1980). However, the Supreme Court of Illinois has rejected this notion and adheres to the principle that a party who files an amended pleading waives any objection to the trial court's ruling on the former complaints. *Boatmen's National Bank v. Direct Lines, Inc.*, 167 Ill. 2d 88, 99, 656 N.E.2d 1101, 1106 (1995).

Even if we reviewed plaintiff's original complaints, they also failed to state a cause of action under section 1983. The original complaint stated defendants violated plaintiff's federal

rights while acting under the color of state law, however, it did not allege specific facts that supported such conclusions. A section 1983 complaint must state specific facts and not just legal and constitutional conclusions. *Lopez*, 939 F.2d 883. The original complaint merely stated plaintiff was "denied the opportunity to fully and completely present his case," but never explains how. It alleged the Board violated hearing procedures, but does not identify which procedures were violated. Illinois is a fact-pleading jurisdiction, and a plaintiff must allege facts sufficient to sustain the cause of action being asserted. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408, 667 N.E.2d 1296, 1300 (1996).

Another defect of plaintiff's complaints is that none of them alleged he exhausted his State administrative remedies. A plaintiff may not sustain a procedural due process claim under section 1983 unless all state remedies are exhausted. *Alexander v. Ieyoub*, 62 F. 3d 709, 712 (1995). This is so because until all State remedies are exhausted, there is still due process available. *Alexander*, 62 F. 3d at 712. Plaintiff could have appealed the Board's decision according to the Administrative Review Act (735 ILCS 5/3-101 (West 1996)). Plaintiff's complaints do not allege he exhausted his State remedies, and do not allege any reason for not using the State remedies. Accordingly, the trial court did not abuse its discretion by dismissing the complaints.

Affirmed.

COOK, J., with GARMAN, P.J., and McCULLOUGH, J., concurring.

APPENDIX B — ORDER OF THE STATE OF ILLINOIS APPELLATE COURT, FOURTH JUDICIAL DISTRICT DATED NOVEMBER 6, 1998 AND FILED NOVEMBER 10, 1998

State of Illinois
Appellate Court
Fourth Judicial District

In the APPELLATE COURT sitting at SPRINGFIELD, within and for the State of Illinois.

Present: Honorable ROBERT W. COOK, Judge
Honorable RITA B. GARMAN, Judge
Honorable JOHN T. MCCULLOUGH, Judge

BE IT REMEMBERED, that on the 1st day of May, 1998, the final judgment of said Appellate Court was entered of record as follows:

General No.: 4-97-0608

Appeal from the Circuit Court of McLean County 96L197

RANDELL L.D. SMITH,

Plaintiff-Appellant,

v.

SANDRA SCOTT, PHILLIP DICK, J. MICHAEL STRUBHAR, ROBERT BUHRKE, JERRY L. HOFFMAN, PATRICK D. KILLIAN, SALLY RUDOLPH, and THOMAS YOUNG,

Defendants-Appellees.

Appendix B

It is the decision of this court that the order on appeal be AFFIRMED and stand in full force and effect.

Costs, if any, to be taxed in accordance with the law.

As Clerk of the Illinois Appellate Court for the Fourth Judicial District and keeper of the records, files and Seal thereof, I certify that the foregoing is a true statement of the final order of said court in the above entitled cause, of record in my office.

IN WITNESS WHEREOF, I have set
my hand and affixed the Seal of
the Illinois Appellate Court for
the Fourth Judicial District,
this 6th day of November, 1998.

s/ illegible
Clerk, Appellate Court for the
Fourth Judicial District

APPENDIX C — NOTICE OF APPEAL DATED AND FILED JULY 14, 1997

APPEAL TO THE APPELLATE COURT
FOR THE CIRCUIT COURT OF McLEAN COUNTY

CASE NO. 96-L-197

RANDELL L.D. SMITH,

Plaintiff-Appellant,

vs.

SANDRA SCOTT, PHILLIP DICK, J. MICHAEL STRUBHAR, ROBERT BUHRKE, JERRY L. HOFFMAN, PATRICK D. KILLIAN, SALLY RUDOLPH, and THOMAS YOUNG,

Defendants-Appellees.

NOTICE OF APPEAL

TO: Paul R. Welch
Attorney at Law
P.O. Box 3127
Bloomington, Illinois 61702-3127

You were hereby notified that the Plaintiff-Appellant, RANDELL L.D. SMITH, hereby appeals to the Appellate Court of Illinois, Fourth District, Springfield, Illinois, from the Court's docket entry of January 31, 1997, dismissing the Amended Complaint, the Court's docket entry of April 23, 1997, dismissing the Third Amended Complaint, and the Court's

docket entry of June 25, 1997, dismissing with the above case with prejudice.

Plaintiff-Appellant prays that the reviewing court reverse the trial court and remand this cause to the Circuit Court of McLean County, Illinois, for a new hearing.

DATED this 14th day of July, 1997.

s/ Randell L. D. Smith
RANDELL L. D. SMITH

APPENDIX D — LETTER OF THE ILLINOIS SUPREME COURT DENYING PETITION FOR LEAVE TO APPEAL DATED OCTOBER 6, 1998

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 6, 1998

Mr. Randell L.D. Smith
R.R. #1, Box 199
Bloomington, IL 61704

No. 85568 – Randell L.D. Smith, petitioner, v. Sandra Scott et al., respondents. Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1998.